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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re MORNING SONG BIRD FOOD
LITIGATION

Lead Case No.
3:12-cv-01592-JAH-AGS

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

DECLARATION OF RACHEL L.
JENSEN IN SUPPORT OF
PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

DATE: February 4, 2019
TIME: 2:30 p.m.
CTRM: 13B
JUDGE: Hon. John A. Houston

1 I, RACHEL L. JENSEN, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the
3 State of California. I am a member of the law firm of Robbins Geller Rudman &
4 Dowd LLP, one of the Class Counsel¹ for Plaintiffs in the above-entitled action.

5 2. My knowledge of the matters herein is based on my active participation
6 in the prosecution and settlement of this consolidated action from commencement to
7 the present (hereinafter, the “Litigation”), as well as my discussions and
8 communications with my colleagues on the prosecution team. Unless otherwise
9 noted, I could and would competently testify that these facts are true and correct.

10 3. I submit this declaration in support of Plaintiffs’ Unopposed Motion for
11 Preliminary Approval of the Class Action Settlement (the “Settlement”).

12 4. Plaintiffs’ claims were zealously litigated from the beginning through
13 Settlement, which was only reached after six years of hard-fought litigation and six
14 weeks before the fact discovery cut-off. The Settlement was achieved only after
15 Plaintiffs and Class Counsel: (a) successfully opposed multiple motions to dismiss and
16 for judgment on the pleadings; (b) prevailed on class certification, including on a
17 Rule 23(f) petition filed by not only by defense counsel at Jones Day, but also Paul D.
18 Clement and Theodore J. Boutrous, Jr.; (c) litigated multiple discovery motions in this
19 District as well as districts across the country and in the Sixth Circuit; (d) reviewed
20 and analyzed 289,000 pages of documents; (e) took 21 depositions and, at the time
21 this Settlement was reached, were preparing to take the deposition of Defendant James
22 Hagedorn; (f) served and responded to hundreds of written discovery requests;
23 (g) served Freedom of Information Act requests on multiple government agencies;
24 (h) retained and consulted with numerous experts, including about the risks posed by
25 the products, the U.S. Environmental Protection Agency pesticide approval process,
26 damages, and retailer policies and procedures, among other topics, and had drafted

27 ¹ Capitalized terms shall have the same meaning as set forth in the Stipulation of
28 Class Action Settlement (“Agreement”), unless otherwise noted.

1 expert reports in anticipation of the rapidly approaching expert discovery deadlines;
2 and (i) assessed the risks of proceeding on the claims at trial and on appeal.

3 5. The Settlement was negotiated at arm's length and overseen by the
4 former District Judge Layn Phillips (ret.). Like the Litigation, the terms of Settlement
5 were hotly contested and negotiations lasted months even once they started in earnest.

6 6. On November 22, 2013, the Honorable Ruben Brooks presided over an
7 in-person Early Neutral Evaluation Conference, as well as several subsequent in-
8 person or telephonic settlement conferences. The Parties were unable to resolve the
9 Action at any of those times.

10 7. On June 4, 2018, the Parties engaged in a full day of mediation in New
11 York before Judge Phillips, but were unable to reach an agreement to resolve the
12 Action before adjourning for the day. Prior to the mediation, the Parties had
13 submitted mediation briefs with supporting exhibits analyzing the strengths and
14 weaknesses of the respective Parties' claims and defenses.

15 8. In the weeks and months that followed the June 4 mediation, the Parties
16 continued to explore potential resolution of the Action by phone and email with the
17 able assistance of Judge Phillips and his team.

18 9. On August 17, 2018, the Parties executed a term sheet, setting forth the
19 principal terms of settlement between Plaintiffs, on behalf of themselves and the
20 Settlement Class, and Defendants.

21 10. After execution of the term sheet, the Parties spent weeks negotiating the
22 terms of the Agreement and exchanging numerous drafts of the Agreement as well as
23 its exhibits.

24 11. The Parties engaged in a competitive bidding process for the Settlement
25 Administrator, which resulted in the selection of KCC.

26 12. The Parties spent many hours collecting data from certain third-party
27 retailers and preparing it for use in the proposed Notice Plan.
28

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 7, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Rachel L. Jensen
RACHEL L. JENSEN

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Mailing Information for a Case 3:12-cv-01592-JAH-AGS In Re: Morning Song Bird Food Litigation

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)